

THE HONORABLE MICHELLE L. PETERSON

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON AT SEATTLE

POINTSTORY, LLC, a Washington limited
liability company,

Plaintiff,

v.

PROTALUS USA, LLC, a Delaware limited
liability company,

Defendant.

Case No. 2:23-cv-01691-MLP

AMENDED PRETRIAL ORDER

JURISDICTION

The U.S. District Court has jurisdiction over this matter pursuant to a “Governing Law” provision in the Agreements entered into by the parties; as well as diversity jurisdiction.

CLAIMS AND DEFENSES

Plaintiff will pursue the following claims for relief at trial:

1. Breach of Contract; and
2. Unjust Enrichment.

Defendant will pursue the following affirmative defenses at trial:

1. Breach of Contract;
2. Estoppel;
3. Set Off / Recoupment; and
4. Failure to State a Claim.

1 Defendant will pursue the following counterclaims at trial:

- 2 1. Violation of the Washington Consumer Protection Act;
- 3 2. Negligent Misrepresentation;
- 4 3. Fraud; and
- 4 4. Attorney Fees.

ADMITTED FACTS

5 The following facts are admitted by the parties:

- 6 1. PointStory, LLC is a digital eCommerce agency based in King County, Washington.
- 7 2. Protalus USA, LLC is a shoe insole company based in Tualatin, Oregon.
- 8 3. On or about December 21, 2020, PointStory and Protalus entered an agreement under
- 9 which PointStory agreed to continue managing Protalus's Amazon marketplace
- 10 account and provide other services related to advertising on Amazon.
- 11 4. On or about March 8, 2021, PointStory and Protalus entered into an agreement titled
- 12 "PointStory, LLC Agency Agreement" wherein PointStory contracted to provide
- 13 Protalus with DSP advertising campaign management within the Amazon
- 14 marketplace.
- 15 5. On or about January 5, 2022, PointStory and Protalus entered another agreement
- 16 titled "PointStory, LLC Agency Agreement" wherein PointStory contracted to
- 17 provide Protalus advertising campaign management services within Facebook,
- 18 Google, and Bing platforms.
- 19 6. On or about June 6, 2022, the parties entered an "Amendment Agreement," which
- 20 amended the agreement dated January 5, 2022.
- 21 7. PointStory invoiced Protalus for services at the end of each billing month.
- 22 8. On or about March 31, 2023, PointStory and Protalus ended the contracts by way of
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an Amended Agreement.

ISSUES OF LAW

The following are the issues of law to be determined by the court:

1. Whether Defendant has breached the terms of the PointStory, LLC Agency Agreement(s) by failing to pay amounts invoiced for services provided thereunder?
2. Whether Defendant has been unjustly enriched by receiving and enjoying benefits provided by Plaintiff under conditions where it would be inequitable for Defendant to retain the benefits without paying the value thereof?
3. Whether Plaintiff violated the Washington Consumer Protection Act by engaging in unfair or deceptive practices?
4. Whether Plaintiff negligently supplied false information to Defendant with respect to Defendant's business transactions, including Defendant's decision to hire and retain Plaintiff to manage its online advertising and e-commerce?
5. Whether Plaintiff intentionally or recklessly made false representations to Defendant regarding Plaintiff's services and/or Defendant's online advertising performance?

EXPERT WITNESSES

(a) Defendant shall be limited to 1 expert witness on the issues of Defendant's digital marketing and e-commerce performance while under the management of Plaintiff.

(b) The name and addresses of the expert witness to be used by Defendant at the trial and the issue upon which she will testify is:

Erika Saracco
Colorwheel Digital
19215 SE 34th St #106-325
Camas, WA 98607

OTHER WITNESSES

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

(a) On behalf of plaintiff:

Tik Yip

c/o Lovik & Juhl, PLLC
936 N 34th St, Ste 300
Seattle, WA 98103
(206) 706-2831

Tik Yip will offer testimony concerning Plaintiff's advertising campaign management services provided to Defendant and the details of billing for such services.

Leszek Lekstan

c/o Lovik & Juhl, PLLC
936 N 34th St, Ste 300
Seattle, WA 98103
(206) 706-2831

Leszek Lekstan will offer testimony concerning the payment of invoices by Defendant during the contractual relationship between the parties.

Kerala Hise

6736 24th Ave NW, Apt. 104
Seattle, WA 98117
(510) 914-0498
kerala.j.hise@gmail.com

Kerala Hise may be called to testify concerning the advertising campaign management work she performed on the Defendant's behalf.

(b) On behalf of defendant:

Name/Address	Nature of Testimony	Will Testify or Possible Witness Only
Anna Heston c/o Chenoweth Law Group 510 SW Fifth Avenue, 4 th Fl	Ms. Heston will provide testimony regarding Defendant's communications with Plaintiff as	Will Testify

1	Portland, OR97204 (503) 221-7958	well as the performance of Defendant's online advertising and e-commerce while under Plaintiff's management.	
2			
3	Henrik Norremark c/o Chenoweth Law Group 510 SW Fifth Avenue, 4 th Fl Portland, OR97204 (503) 221-7958	Mr. Norremark will provide testimony regarding Defendant's communications with Plaintiff as well as Defendant's damages.	Possible Witness Only
4			
5	Erika Saracco Colorwheel Digital 19215 SE 34th St #106-325 Camas, WA 98607 503-720-8163	Ms. Saracco will provide expert witness testimony regarding her analysis of Defendant's digital marketing and e-commerce performance while under the management of Plaintiff.	Will Testify
6			
7	Nick Harris Prism Growth nick@prismgrowth.com (802) 733-7868	Mr. Harris may provide testimony regarding his observations of Plaintiff's management of Defendant's Google account.	Possible Witness Only
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9	Nicole Cluskey c/o Chenoweth Law Group 510 SW Fifth Avenue, 4th Fl Portland, OR 97204 (503) 221-7958	Ms. Cluskey may provide testimony regarding Defendant's communications with Plaintiff as well as Defendant's damages.	Possible Witness Only
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EXHIBITS

Identify each exhibit with a number, which becomes the number for the exhibit at the trial and appears on the exhibit tag with the following information in table format:

PLAINTIFFS EXHIBITS					
Exhibit	Description	Authenticity	Admissibility	Objection	Admitted
1.	PointStory, LLC Agency Agreement (Amazon DSP)	Stipulated	Stipulated		
2.	PointStory, LLC Agency Agreement (Google/Bing/Facebook)	Stipulated	Stipulated		
3.	Amendment Agreement	Stipulated	Stipulated		
4.	Amendment Agreement	Stipulated	Stipulated		

PLAINTIFFS EXHIBITS					
Exhibit	Description	Authenticity	Admissibility	Objection	Admitted
5.	Invoice No. 1476	Stipulated	Stipulated		
6.	Invoice No. 1505	Stipulated	Stipulated		
7.	Invoice No. 1507	Stipulated	Stipulated		
8.	Invoice No. 1515	Stipulated	Stipulated		
9.	Invoice No. 1520	Stipulated	Stipulated		
10.	Invoice No. 1521	Stipulated	Stipulated		
11.	Invoice No. 1527	Stipulated	Stipulated		
12.	Invoice No. 1534	Stipulated	Stipulated		
13.	Invoice No. 1539	Stipulated	Stipulated		
14.	Protalus Weekly Reporting <i>Electronic Exhibit</i> <i>(EXCEL)</i>	Disputed	Disputed	F	
15.	Protalus Weekly Notes	Disputed	Disputed	F	
16.	Amazon - Setting up and optimizing Sponsored Advertising Campaigns	Disputed	Disputed	F	
17.	Facebook - Create New Campaigns	Disputed	Disputed	F	
18.	Facebook - Optimize Campaigns	Disputed	Disputed	F	
19.	Amazon Ads <i>Electronic Exhibit</i>	Disputed	Disputed	F	
20.	Amazon Optimization Uploads <i>Electronic Exhibit</i> <i>(EXCEL)</i>	Stipulated	Stipulated		
21.	Sponsored Products Search Termreport <i>Electronic Exhibit</i> <i>(EXCEL)</i>	Stipulated	Stipulated		

DEFENDANT'S EXHIBITS					
Exhibit	Description	Authenticity	Admissibility	Objection	Admitted
101.	Screenshot of PointStory website "About Us" (https://www.pointstory.io)	Stipulated	Stipulated		
102.	Screenshot of PointStory website "How we can help you" (https://www.pointstory.io)	Stipulated	Stipulated		
103.	Screenshot of PointStory website "Our Services" (https://www.pointstory.io)	Stipulated	Stipulated		
104.	PointStory, LLC Agency Contract dated 12/21/20	Stipulated	Stipulated		
105.	PointStory, LLC Agency Contract dated 2/8/2021 (POINTSTORY_000048-000051)	Stipulated	Stipulated		
106.	Email from T. Yip to A. Chan dated 10/11/2021	Stipulated	Stipulated		
107.	Text message from T. Yip to A. Heston dated 1/4/2022	Stipulated	Stipulated		
108.	PointStory, LLC Agency Contract dated 1/5/2022 (POINTSTORY_000074-000078)	Stipulated	Stipulated		
109.	Amendment Agreement dated 6/6/2022 (POINTSTORY_000079-000080)	Stipulated	Stipulated		
110.	PointStory, LLC Agency Contract dated 6/29/2022	Stipulated	Stipulated		
111.	Email from T. Yip to C. Barr dated 4/24/2023 (POINTSTORY_000101-000105)	Stipulated	Stipulated		
112.	Sponsored Products Search Term Report dated 3/3/2022 (POINTSTORY_001100)	Stipulated	Stipulated		
113.	Spreadsheet titled "Protalus Weekly Reporting" (POINTSTORY_000035)	Stipulated	Stipulated		

DEFENDANT'S EXHIBITS					
Exhibit	Description	Authenticity	Admissibility	Objection	Admitted
114.	Text from A. Heston to T. Yip dated 6/27/2022 (POINTSTORY_000024-000025)	Stipulated	Stipulated		
115.	Case Study dated 10/6/2021 (POINTSTORY_001107-001109)	Stipulated	Stipulated		
116.	Email from T. Yip to A. Chan and H. Norremark dated 10.14.2021	Disputed	Disputed	F	
117.	Email from T. Yip to A. Heston dated 11/16/2021 (POINTSTORY_000056-000058)	Stipulated	Stipulated		
118.	T. Yip text messages with Anna Heston dated 4/14/2022 (POINTSTORY_000013-000021)	Stipulated	Stipulated		
119.	Impact – Account Setup and build grow affiliate program (POINTSTORY_000487-000488)	Stipulated	Stipulated		
120.	Email from A. Heston to C. Barr dated 6/22/2022	Stipulated	Stipulated		
121.	Screenshot of PointStory website "Case Study – Protalus" (https://www.pointstory.io)	Stipulated	Stipulated		
122.	Screenshot of PointStory website "A health and fitness brand" (https://www.pointstory.io)	Stipulated	Stipulated		
123.	Screenshots of Protalus Google advertisement	Stipulated	Stipulated		
124.	Screenshots of Protalus Facebook advertisement	Stipulated	Stipulated		
125.	Amendment Agreement dated 3/14/2023 (POINTSTORY_000094-000095)	Stipulated	Stipulated		

DEFENDANT'S EXHIBITS					
Exhibit	Description	Authenticity	Admissibility	Objection	Admitted
126.	<i>[reserved]</i>				
127.	<i>[reserved]</i>				
128.	<i>[reserved]</i>				
129.	PointStory Invoice dated 5/31/2022 (POINTSTORY_000081-000082)	Stipulated	Stipulated		
130.	Email from L. Lekstan to T. Yip and M. Yip dated 4/25/2023 (POINTSTORY_000106-000111)	Stipulated	Stipulated		
131.	Email from S. Anderson to T. Yip, A. Heston dated 10/28/2021 (POINTSTORY_000052-000053)	Stipulated	Stipulated		
132.	Email from C. Barr to A. Heston dated 6/15/2022	Stipulated	Stipulated		
133.	Protalus Topline Revenue from 1/1/18-11/1/23 dated 11/1/2023	Stipulated	Stipulated		
134.	Protalus "Supermetrics Test" Spreadsheet dated 3/13/2023	Stipulated	Stipulated		
135.	Summary of Protalus Damages	Disputed	Disputed	F	
136.	Report – PointStory Invoices and Payments	Disputed	Disputed	F	
137.	Impact.com Fraud List	Disputed	Disputed	F; MIL	
138.	PointStory, LLC Agency Contract dated 3/30/21	Stipulated	Stipulated		
139.	Protalus Advertisements	Stipulated	Stipulated		
140.	Google ROAS charts from April and May 2023	Disputed	Disputed	F	

DEPOSITION DESIGNATIONS

A. Defendant's Deposition Designations:

1. Deposition of Courtney Titus taken on March 14, 2025

1.	26:1-27:19
2.	41:2-42:4
3.	47:14-48:22
4.	64:25-65:22
5.	74:2-12
6.	76:5-11
7.	88:25-89:10
8.	92:6-16

2. Deposition of Tik Shunyip taken on January 21, 2025

1.	29:6-20
2.	42:24-43:9
3.	47:5-48:9
4.	56:23-57:8
5.	65:19-66:23
6.	73:3-24
7.	78:15-80:2
8.	95:11-17
9.	103:8-20

1 The Parties' Objection Code:

2 E Exhibit is objectionable because it constitutes attempted expert testimony from a person who
3 was not designated as an expert (Fed. R. Civ. P. 26)

4 F Lack of foundation

5 MIL Subject of Motion in Limine

6 In the Authenticity and Admissibility columns, indicate "Stipulated" or "Disputed". If
7 "Disputed", identify the objection in the Objection column. An objection based on a Fed. R.
8 Evid. should reference the rule number; additional objections should be referenced by a code that
9 the parties include with the exhibit list. The "Admitted" column is for use by the Court.
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12 ACTION BY THE COURT

13 (a) This case is scheduled for trial before a jury on May 14, 2025, at 9:00 am.

14 (b) Trial briefs shall be submitted to the court on or before May 2, 2025.

15 (c) Jury instructions requested by either party shall be submitted to the court on or before
16 May 2, 2025. Suggested questions of either party to be asked of the jury by the court on voir dire
17 shall be submitted to the court on or before May 2, 2025.

18 (d) This order has been approved by the parties as evidenced by the signatures of their
19 counsel. This order shall control the subsequent course of the action unless modified by a
20 subsequent order. This order shall not be amended except by order of the court pursuant to
21 agreement of the parties or to prevent manifest injustice.
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23 DATED this 13th day of May, 2025.
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26 THE HONORABLE MICHELLE L. PETERSON

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2 FORM APPROVED
3

4 s/ Nicholas W. Juhl
5 Nicholas W. Juhl, WSBA No. 35318
6 Attorney for Plaintiff

7 s/ Brian D. Chenoweth
8 Brian D. Chenoweth, WSBA No. 25877
9 Attorney for Defendant
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